



DEPARTMENT OF THE TREASURY

Office of the Secretary of the Treasury

31 CFR Parts 16, 27, and 50

Inflation Adjustment of Civil Monetary Penalties

AGENCY: Departmental Offices Treasury.

ACTION: Final rule

SUMMARY: The Department of the Treasury (“Department” or “Treasury”) publishes this final rule to adjust its civil monetary penalties (“CMPs”) for inflation as mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (collectively referred to herein as “the Act”). This rule adjusts CMPs within the jurisdiction of two components of Departmental Offices for 2022 and 2023.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For information regarding the Terrorism Risk Insurance Program’s CMPs, contact Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, Room 1410 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, at (202) 622-2922 (not a toll-free number), or Sherry Rowlett, Program Policy Analyst, Federal Insurance Office, at (202) 622-1890 (not a toll free number). Persons who have difficulty hearing or speaking may access these numbers via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

For information regarding the Treasury-wide CMPs, contact Richard Dodson, Senior Counsel, General Law, Ethics, and Regulation, 202-622-9949.

SUPPLEMENTARY INFORMATION:

I. Background

In order to improve the effectiveness of CMPs and to maintain their deterrent effect, the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note (“the Inflation Adjustment Act”), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114-74) (“the 2015 Act”), requires Federal agencies to adjust each CMP provided by law within the jurisdiction of the agency. The 2015 Act requires agencies to adjust the level of CMPs with an initial “catch-up” adjustment through an interim final rulemaking and to make subsequent annual adjustments for inflation, without needing to provide notice and the opportunity for public comment required by 5 U.S.C. 553. This rule constitutes the Department’s 2022 and 2023 annual adjustment. The 2015 Act provides that any increase in a CMP shall apply to CMPs that are assessed after the date the increase takes effect, regardless of whether the underlying violation predated such increase.¹

II. Method of Calculation

The method of calculating CMP adjustments applied in this final rule is required by the 2015 Act. Under the 2015 Act and the Office of Management and Budget guidance required by the 2015 Act, annual inflation adjustments subsequent to the initial catch-up adjustment are to be based on the percent change between the Consumer Price Index for all Urban Consumers (“CPI-U”) for the October preceding the date of the adjustment and the prior year’s October CPI-U. As set forth in Office of Management and Budget (OMB) Memorandum M-22-07 of December 15, 2021, the adjustment multiplier for 2022 is 1.06222. Additionally, as set forth in OMB Memorandum M-23-05 of December 15, 2022, the adjustment multiplier for 2023 is 1.07745. In order to complete the 2022 and 2023 annual adjustments, each current CMP is multiplied by the 2022 and 2023 adjustment multipliers. Under the 2015 Act, any increase in CMP must be rounded to the nearest multiple of \$1.

¹ However, the increased CMPs apply only with respect to underlying violations occurring after the date of enactment of the 2015 Act, i.e., after November 2, 2015.

With regard to the CMPs assessed under 31 U.S.C. 3802(a), the penalty assessment for 2021 (\$8,212) is multiplied by 1.06222, resulting in a penalty of \$8,723 for 2022. Multiplying \$8,723 by 1.07745 results in a penalty of \$9,399 for 2023.

With regard to the CMPs assessed under 31 U.S.C. 333(c), the first penalty under this section was adjusted to \$8,212 in 2021. This amount is multiplied by 1.06222, resulting in a penalty of \$8,723 for 2022. Multiplying \$8,723 by 1.07745 results in a penalty of \$9,399 for 2023. The second penalty under this section was adjusted to \$41,056 in 2021. Multiplying this amount by 1.06222 results in a penalty of \$43,611 for 2022. Multiplying \$43,611 by 1.07745 results in a penalty of \$46,989 for 2023.

Finally, with regard to the CMP assessed under Section 104 of Title I, Pub. L. 107-297, as amended, the penalty assessment for 2021 (\$1,436,220) is multiplied by 1.06222, resulting in a penalty of \$1,525,582 for 2022. Multiplying \$1,525,582 by 1.07745 results in a penalty of \$1,643,738 for 2023.

Procedural Matters

1. Administrative Procedure Act

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701(b)) requires agencies to make annual adjustments for inflation to CMPs, without needing to provide notice and the opportunity for public comment and a delayed effective date required by 5 U.S.C. 553. Additionally, the methodology used for adjusting CMPs for inflation is provided by statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. The Department is charged only with performing ministerial computations to determine the dollar amount of adjustments for inflation to CMPs. Accordingly, prior public notice, an opportunity for public comment, and a delayed effective date are not required for this rule.

2. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

3. *Executive Order 12866*

This rule is not a significant regulatory action as defined in section 3.f of Executive Order 12866.

4. *Paperwork Reduction Act*

The provisions of the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements.

List of Subjects

31 CFR Part 16

Administrative Practice and Procedure, Claims, Fraud, Penalties

31 CFR Part 27

Administrative Practice and Procedure, Penalties.

31 CFR Part 50

Insurance, Terrorism.

Authority and Issuance

For the reasons set forth in the preamble, parts 16, 27, and 50 of title 31 of the Code of Federal Regulations are amended as follows:

PART 16—REGULATIONS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

1. The authority citation for part 16 continues to read as follows:

Authority: 31 U.S.C. 3801-3812

2. Amend § 16.3 by revising paragraphs (a)(1)(iv) and (b)(1)(ii) to read as follows:

§ 16.3 Basis for civil penalties and assessments.

(a) ***

(1) ***

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$9,399 for each such claim.

* * * * *

(b) ***

(1) ***

(ii) Includes or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the content of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$9,399 for each such statement.

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PART 27—CIVIL PENALTY ASSESSMENT FOR MISUSE OF DEPARTMENT OF THE TREASURY NAMES, SYMBOLS, ETC.

3. The authority citation for part 27 continues to read as follows:

Authority: 31 U.S.C. 321, 333

4. Amend § 27.3 by revising paragraph (c) to read as follows:

§ 27.3 Assessment of civil penalties.

* * * * *

(c) *Civil penalty.* An assessing official may impose a civil penalty on any person who violates the provisions of paragraph (a) of this section. The amount of a civil monetary penalty shall not exceed \$9,399 for each and every use of any material in violation of paragraph (a), except that such penalty shall not exceed \$46,989 for each and every use if such use is in a broadcast or telecast.

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PART 50—TERRORISM RISK INSURANCE PROGRAM

5. The authority citation for part 50 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107-297, 116 Stat. 2322, as amended by Pub. L. 109-144, 119 Stat. 2660, Pub. L. 110-160, 121 Stat. 1839, Pub. L. 114-1, 129 Stat. 3, and Pub. L. 116-94, 133 Stat. 2534 (15 U.S.C. 6701 note); Pub. L. 114-74, 129 Stat. 601, Title VII (28 U.S.C. 2461 note); Pub. L. 116-94, Div. I, Title V, § 501, 133 Stat. 3026.

6. Amend § 50.83 by revising paragraph (a) to read as follows:

§ 50.83 Adjustment of civil monetary penalty amount.

(a) *Inflation adjustment.* Any penalty under the Act and these regulations may not exceed the greater of \$1,643,738 and, in the case of any failure to pay, charge, collect or remit amounts in accordance with the Act or these regulations, such amount in dispute.

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Kayla Arslanian,

Executive Secretary.

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